

BANKRUPTCY RELATED DECISIONS
U.S. BANKRUPTCY COURT, DISTRICT OF NORTH DAKOTA
U.S. DISTRICT COURT, DISTRICT OF NORTH DAKOTA
EIGHTH CIRCUIT BANKRUPTCY APPELLATE PANEL
EIGHTH CIRCUIT COURT OF APPEALS & U.S. SUPREME COURT

Prepared by Judge William A. Hill
United States Bankruptcy Court
July 1, 2005 through June 19, 2006

ABSTENTION

In re Foss 328 B.R. 780 (B.A.P. 8th Cir. 2005)

The district court holds concurrent jurisdiction under § 523(a)(18) and abstention is appropriate where an appeal is pending.

ADMINISTRATIVE EXPENSE

In re Athens/Alpha Gas Corp., 332 B.R. 578 (B.A.P. 8th Cir. 2005)

Claimants were entitled to an administrative expense for their share of postpetition oil and gas revenues.

APPEAL

In re Ruesch, 337 B.R. 203 (B.A.P. 8th Cir. 2005)

Failing to demonstrate Rule 60 relief, the court concludes that the appeal was not timely nor was there a motion for Rule 52 or 59 relief.

ATTORNEYS

In re Big Mac Marine, Inc., 326 B.R. 150 (B.A.P. 8th Cir. 2005)

An attorney cannot represent both creditor-principal and debtor in same case.

BANKRUPTCY FRAUD

United States v. Ryder, 414 F.3d 908 (8th Cir. 2005)

Fraudulent conduct of debtors constituted criminal fraud.

CHECKS

In re Thomas, 428 F.3d 735 (8th Cir. 2005)

362(b)(1) provides an exception to the stay for presentment of negotiable instruments. The creditor did not violate the stay.

CLAIMS

In re Hollingsworth, 331 B.R. 399 (B.A.P. 8th Cir. 2005)

In this case a creditor was entitled to surplus Chapter 7 funds where excess funds existed to pay all creditors in full.

DAMAGES

In re Tri-River Trading, LLC, 329 B.R. 252 (B.A.P. 8th Cir. 2005)

Here, a limited liability company's (debtor) managing member was entitled to 7/8 of gross settlement proceeds from a prepetition lawsuit.

DISCHARGE

In re Church, 328 B.R. 544 (B.A.P. 8th Cir. 2005)

A creditor bears the burden of proving that a debt is nondischargeable under § 523 (a)(2)(A). A mere promise to pay is not a misrepresentation made by borrower if he fails to do so. A person must prove that there was an intentional misrepresentation.

International Paper v. MCI WorldCom Network, 442 F.3d 633 (8th Cir. 2006)

Under Chapter 11, confirmation discharges any debt that arose before confirmation.

EQUITABLE SUBORDINATION

In re Racing Services, Inc., 340 B.R. 73 (B.A.P. 8th Cir 2006)

The Court did not abuse its discretion when it equitably subordinated the claimant's administrative expense claim.

FARMERS

In re Marlar, 432 F.3d 813 (8th Cir. 2005)

Under § 303(a), a debtor's status as a farmer is an affirmative defense that is waived if not timely raised.

FIDUCIARIES

In Re Hrabik, 330 B.R. 765 (Bnkrtcy. D. N.D. 2005)

The Debtor acted in a fiduciary capacity. He held a durable power of attorney which was to be used only for “just debts and expenses.” The fiduciary capacity was abused under 11 U.S.C. 523 (a)(4).

FRAUDULENT TRANSFER

In Re Sun Valley Products, Inc., 328 B.R. 147 (Bnkrtcy. D. N.D. 2005)

Under § 548, the court determined that the property was sold for reasonably equivalent value. Appraisal testimony was not persuasive.

JUDGMENT

In re Dale, 332 B.R. 574 (B.A.P. 8th Cir. 2005)

Judgment as a matter of law would not be disturbed when based on proper application of law to findings of, Judgment was not clearly erroneous.

JURISDICTION

In re Young, 336 B.R. 775 (B.A.P. 8th Cir. 2006)

The bankruptcy court retained subject matter jurisdiction and had jurisdiction over the involuntary Chapter 7 case.

LIEN AVOIDANCE

In re Rick’s Auto Outlet of Monticello, LLC, 327 B.R. 650 (B.A.P. 8th Cir. 2005)

The deed did not provide sufficient notice that individuals who had signed it were acting on behalf of the LLC. Failure to provide constructive notice allowed the trustee to avoid it.

PROBATE

Marshall v. Marshall, 2006 WL 1131904 (U.S.2006)

In this case, the U.S. Supreme Court ruled, reversing the 9th Circuit, that state probate court’s jurisdiction is reserved.

PROCESS

In re Dixon, 338 B.R. 383 (B.A.P. 8th Cir. 2006)

Here, the BAP refused to recognize that “exigent circumstances” existed. No waiver of the new BAPCPA requirements.

PROPERTY OF THE ESTATE

In re Law, 336 B.R. 780 (B.A.P. 8th Cir. 2006)

The federal child tax credit that debtors received post-petition was included in property of the estate. Tax refunds are property of the estate.

SETTLEMENT

In re Racing Services, Inc., 332 B.R. 581 (B.A.P. 8th Cir. 2005)

Objector had a right to a hearing on its settlement objection.

STAY

In re Ealy, 148 Fed. Appx. 564 (8th Cir. 2005)

A stay protects all legal and equitable interests from actions by creditors including foreclosures.

STUDENT LOANS

In re Woodcock, 326 B.R. 441 (B.A.P. 8th Cir. 2005)

There was no “undue hardship” as regards the discharge of student loans.

In re Parker, 328 B.R. 548 (B.A.P. 8th Cir. 2005)

Reversing the bankruptcy court, the BAP held that it would not pose an undue hardship to require the debtor to payback student loans where 51 year-old art teacher who had no dependents, is single and has medical condition filed Chapter 7 petition.

In Re Reynolds, 425 F3d 526 (8th Cir. 2005)

In this case the court determined that based on the “totality of the circumstances” coupled with an examination of fairness and equity and the unique facts of the case, the debtor was entitled to a discharge of her student loans.

SUMMARY JUDGMENT

Murray v. American Family Mut. Ins. Co., 429 F.3d 757 (8th Cir. 2005)

Underinsured motorist coverage is discussed in detail, with the court concluding that the

concept of stacking does not apply.

In re D'Amato, 341 B.R.1 (B.A.P. 8th Cir. 2006)

No collateral estoppel effect where the findings were overstated and there was no evidence in the record of existence or cause of plaintiff's injuries.

TAXES

In re Colsen, 446 F.3d 836 (8th Cir. 2006)

1040 returns qualified as "returns" and were dischargeable. Honesty of filers attempt to satisfy tax laws should be determined from the face of the form itself.

TRADEMARK

A & L Laboratories v. Bou-matic, LLC, 429 F.3d 775 (8th Cir. 2005)

Here the issue centered upon ownership of trademarks of chemicals. Summary judgment was properly entered in this case, with the court finding no error.